

**Testimony of Puget Sound Energy, Portland General Electric, Pacific
Avista Corporation in opposition to SB 313 (Jergeson) before the Sena
Resources and Energy Committee: February 16, 2007.**

**Mr. Chair and Members of the Committee: For the record my name is Tom
Ebzery, and I am a Billings attorney appearing today on behalf of Puget Sound
Energy (50% interest in Colstrip 1 and 2; 25% interest in Colstrip 3 and 4) Portland
General Electric(20% interest in Colstrip 3 and 4) PacificCorp (10% interest in
Colstrip 3 and 4 and owner of Bigfork Hydro Facility) and Avista Corp (15%
interest in Colstrip 3 and 4 and owner of Noxon Rapids Hydroelectric Facility in
Noxon, Montana. Noxon is the largest private hydro facility in Montana producing
over 450 MW of electricity.**

**This bill has been a tough one to follow from LC stage. When it first appeared on
the LC list the sponsor was Representative Hal Jacobson. I obtained a copy and sat
down with Rep. Jacobson to find out what he had in mind. He told me this was his
last term in the House and wanted to do something for his constituents on energy
bills. He told me the idea came from Jergy who I presumed was a "constituent." I
sat down and we went through the bill line by line and I asked him questions and
posed problems with the bill which he said he would take back. I will discuss those
with you in a moment but imagine my surprise when the LC was transferred to
Senator Wanzenried and the "constituent" Jergy was none other than PSC
Commissioner Jergeson. In a work session earlier this week when the bill number
was raised, the latter said that is "my bill."**

**We strongly oppose this legislation as it is flawed and will clearly invite ^{litigation} ~~legislation~~
and for what purpose? Let me take you through the legislation and hopefully you
will agree. The first three pages are existing law so Page 4 is where I will begin.
Lines 3 and 4 is intended to be the qualifying language for the "take" It says electric
generation facility necessary for a public utility to comply with "standards
mandated by federal or state laws or rules." Just how much more vague and
arbitrary can you be. It appears the PSC or another agency could just promulgate
some rules saying the regulated entity is to secure facilities in order to meet its load.
What state laws?**

**Second question: Page 4: How can the PSC authorize one utility to exercise
eminent domain on another facility or public utility when it has NO
JURISDICTION over that utility or facility?**

**Third question: What is the reasoning or rational basis for exempting other PSC
regulated utilities, or rural electric cooperatives? I know the federal government
would simply laugh at the exercise and probably be ignored by a state power agency
whatever that means.**

**Fourth question Page 4 Lines 13-17: What process is spelled out for the
Commission to use to authorize the taking? There is nothing in the Act or current**

Tom Ebzery
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2/16/07

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This bill has been a tough one to follow from LC stage. When it first appeared on the LC list the sponsor was Representative Hal Jacobson. I obtained a copy and sat down with Rep. Jacobson to find out what he had in mind. He told me this was his last term in the House and wanted to do something for his constituents on energy bills. He told me the idea came from Jergy who I presumed was a "constituent." I sat down and we went through the bill line by line and I asked him questions and posed problems with the bill which he said he would take back. I will discuss those with you in a moment but imagine my surprise when the LC was transferred to Senator Wanzenried and the "constituent" Jergy was none other than PSC Commissioner Jergeson. In a work session earlier this week when the bill number was raised, the latter said that is "my bill."

We strongly oppose this legislation as it is flawed and will clearly invite ^{litigation} ~~legislation~~ and for what purpose? Let me take you through the legislation and hopefully you will agree. The first three pages are existing law so Page 4 is where I will begin. Lines 3 and 4 is intended to be the qualifying language for the "take" It says electric generation facility necessary for a public utility to comply with "standards mandated by federal or state laws or rules." Just how much more vague and arbitrary can you be. It appears the PSC or another agency could just promulgate some rules saying the regulated entity is to secure facilities in order to meet its load. What state laws?

Second question: Page 4: How can the PSC authorize one utility to exercise eminent domain on another facility or public utility when it has NO JURISDICTION over that utility or facility?

Third question: What is the reasoning or rational basis for exempting other PSC regulated utilities, or rural electric cooperatives? I know the federal government would simply laugh at the exercise and probably be ignored by a state power agency whatever that means.

Fourth question Page 4 Lines 13-17: What process is spelled out for the Commission to use to authorize the taking? There is nothing in the Act or current

Commission rules providing procedures for the "target" utility or facility to challenge this process. This is a fatal flaw.

I call your attention to page 5 of the bill which turns the "eminent domain" statute on its head by stating that taking hydroelectric generating facilities are a more necessary public use than all the others which have been established by law. What is the basis for hydro being at the pinnacle of all uses? Totally arbitrary and no basis whatsoever to change the eminent domain code and establish priorities.

Another question I had of Representative Jacobson was how does one condemn a hydroelectric facility in which two dams Noxon Rapids in Montana and Cabinet Gorge in Idaho are under one FERC license and considered a "single facility." I am not aware that eminent domain crosses state boundaries.

I kept looking every day for a fiscal note and am told there is none. How can this be? If a taking occurs under this bill, the condemnor utility must pay "fair market value" to the condemnee and replacement cost for those taken facilities which are in rate bases for their customers? This would be in the hundreds of millions of dollars and is the cost going to be shifted to the customer to make the condemnation.

This bill is flawed; it is late; it is punitive and apparently targeted to one of the parties to the utility civil wars raging in the capitol. We are concerned about fallout and believe the bill will clearly not benefit customers but instead cost ratepayers as well as saying to those who have invested heavily in the state and have paid taxes in many cases for over half a century to counties and the state that you are at risk. On behalf of these companies we urge you to Vote NO and then Table SB 313